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July 9, 2021

VIA ECF

Honorable Brian M. Cogan
United States District Court, E.D.N.Y.
225 Cadman Plaza East, Chambers 704S
Brooklyn, NY 11201

Re: Kivo v. Credit Control Services, Inc., 2:21-cv-2985-BMC

Dear Judge Cogan:

On behalf of Plaintiff Melissa Kivo and Defendant Credit Control Services, Inc., the parties respectfully submit this joint letter pursuant to the Court's mandatory requirements for the initial status scheduled for July 15, 2021 at 1:00 p.m.

Plaintiff filed a class action complaint on May 26, 2021, alleging violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. ("FDCPA") arising from Defendant's attempts to collect a health care debt from plaintiff. Plaintiff filed an executed waiver of service on May 28, 2021. (*Dkt. No. 2*)

Plaintiff's complaint alleges that Defendant caused a letter vendor to send her the collection letter attached to the complaint as Exhibit A. Plaintiff alleges that in order to have the letter vendor send her Exhibit A, Defendant had to furnish Plaintiff's name, address, status of Plaintiff as a debtor, details about Plaintiff's alleged debt and other personal information to a third-party letter vendor. Plaintiff alleges that she did not consent to disclosing her personal and confidential information concerning the debt or otherwise to any third-party. Plaintiff alleges that Defendant's disclosure of her personal and confidential information to an unauthorized third party violated the FDCPA, 15 U.S.C. § 1692c(b). Plaintiff further alleges that Defendant violated the FDCPA, 15 U.S.C. § 1692f, by using unfair means to collect a debt by disclosing personal and confidential information about her to unauthorized third parties. Plaintiff brings this action on behalf of a putative class.

Defendant denies each and every substantive allegations in Plaintiff's Class Action Complaint. CCS denies that it violated the FDCPA or that it improperly communicated with a third party in connection with the collection of a debt. CCS avers that the secure electronic transmission of data does not violate the FDCPA as it is not a communication in connection with the collection of a debt as the secure transmission of data from computer server to computer server

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does not violate the FDCPA. Further, as there is no human review, intervention or dissemination to the public and as such there is no basis for Plaintiff's Invasion of Privacy claims. The use of third-party vendors and electronic transfer of information is contemplated in the plain text of the FDCPA as a debt collector is not prohibited from communicating with a third party with respect to or regarding a debt and is specifically approved in 15 U.S.C. §§ 1692b(5), 1692f(5) & 1692f(8). CCS denies it violated the FDCPA as the secure electronic computer server to computer server transmission of electronic information does not interfere with or impinge on consumer protections. CCS did not violate Section 1692c(b) of the FDCPA. CCS denies that Plaintiff's Complaint alleges facts sufficient to rise to the level of conduct required to recover statutory damages under the FDCPA, thus all requests for statutory damages are improper. Further, Plaintiff has failed to show any violation of the FDCPA, and, therefore, is not entitled to attorney's fees or costs. As to Plaintiff's Class Allegations, Plaintiff's claims are atypical of her putative class.

Plaintiff alleges that the jurisdiction of this Court arises under 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1331. Essentially identical allegations to what Plaintiff alleges in her complaint were held to inflict sufficient injury to give rise to standing in *Hunstein v. Preferred Collection Mgmt. Servs., Inc.*, 994 F.3d 1341, 1347-49 (11th Cir. 2021). The Eleventh Circuit applying the test for standing set forth in *Trichell v. Midland Credit Mgmt., Inc.*, 964 F.3d 990 (11th Cir. 2020), and cited with approval by the Supreme Court in *TransUnion, LLC v. Ramirez*, 20-297, 2021 U.S. LEXIS 3401 (June 25, 2021), held that 15 U.S.C. § 1692c(b) is violated and results in a concrete injury for Article III purposes when a debt collector provides a third-party letter vendor with personal account information in connection with collecting a debt. The Eleventh Circuit held that provision of this personal confidential information without the consumer's consent is an impermissible communication with a third party that violates the FDCPA. *Hunstein*, 994 F.3d at 1352.

CCS agrees with Plaintiff that the 11th Circuit, in *Hunstein*, held that a Plaintiff has Article III standing in the context of a theoretical (and conjectural) disclosure of debt information to a letter vendor debt, in the context of a 15 U.S.C. § 1692c(b) claim. CCS takes the position that the alleged conduct does not present a violation of the FDCPA, but concedes that Plaintiff has Article III standing.

There are no motions pending.

Plaintiff anticipates filing a motion for class certification. Plaintiff and Defendant anticipate filing motions for summary judgment.

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Respectfully submitted,

s/ Heather Kolbus

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CERTIFICATE OF SERVICE

I, Heather Kolbus, hereby certify that on Friday, July 9, 2021, I caused a true and accurate copy of the foregoing document to be filed via the Court's CM/ECF system, which caused notification to be sent via email to the following parties:

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/s/ Heather Kolbus
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